

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

CINDA LEE LOVATO, individually, on §
Behalf of all wrongful death beneficiaries, §
And on behalf of the ESTATE OF §
DANIEL LUIS MARTINEZ, and §
MARK MARTINEZ, individually, §
Plaintiffs, §
§

v. §

CIVIL ACTION NO. 2:20-CV-00070-BR

AMY HITCHCOCK, TANNER VANOVER, §
JARED RICE, B. HOWARD, S. SHOOK, §
BRIAN THOMAS, and LISA DAWSON, §
in their individual capacities, and §
POTTER COUNTY, TEXAS, §
Defendants. §

**AGREED MOTION AND BRIEF FOR LEAVE TO FILE CONSOLIDATED
MOTIONS TO DISMISS, RESPONSE, AND REPLY BRIEFS
AND MOTION TO MODIFY DEADLINE TO FILE MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE, LEE ANN RENO:

COME NOW Defendants Amy Hitchcock, Tanner Vanover, Jared Rice, Brett Howard, Sara Shook, Brian Thomas, Lisa Dawson, and Potter County, Texas (“Potter County Defendants”) and Plaintiffs Cinda Lee Lovato, individually, on behalf of all wrongful death beneficiaries, and on behalf of the Estate of Daniel Luis Martinez, and Mark Martinez, individually, and file this Agreed Motion and Brief seeking leave to file consolidated Motions to Dismiss, consolidated responses, and consolidated replies and an extension of the page limits which govern stand-alone briefs. Additionally, the Potter County Defendants seek to modify the briefing deadline for the filing of a Consolidated Motion to Dismiss in Response to the Plaintiffs’ First Amended Complaint (Doc. 36) which was filed on December 17.

I.

**THE PARTIES SEEK LEAVE TO FILE A
CONSOLIDATED MOTION, RESPONSE, AND REPLY**

The Potter County Defendants respectfully move for leave to exceed the standard page limits and file a single consolidated Motion to Dismiss not to exceed 50 pages, excluding the table of contents and table of authorities. The Plaintiffs respectfully move for leave to file a consolidated response not to exceed 50 pages, excluding the table of contents and table of authorities. The Potter County Defendants respectfully move for leave to exceed the reply page limit and file a consolidated reply not to exceed 25 pages, excluding the table of contents and table of authorities.

In this case there are four individual Defendants, two individuals sued as supervisors, and Potter County sued as a governmental entity. In response to Plaintiffs' Original Complaint the Potter County Defendants filed standalone Motions to Dismiss (Docs. 6-8). The Plaintiffs filed a consolidated response to these motions. (Doc. 22). The Potter County Defendants then filed a consolidated reply to these motions. (Doc. 25).

The parties seek leave to file consolidated briefs in this instance because of the benefits of the previous consolidated briefing in this case. This prior consolidated briefing allowed both parties to save space because common issues and shared underlying facts did not have to be repeated in each separate brief, consuming more pages. Additionally, the consolidated briefing was a pragmatic use of judicial resources because the default page limits under Local Rule 7.2(c) for motions is 25 pages, and for replies is 10 pages. Standalone briefing for the three different defendant groups in this case would potentially result in 75 pages of motion briefing, 75 pages of response briefing, and 30 pages of reply briefs.

Accordingly, the parties seek leave to file consolidated motions and briefs in this case to address all of the claims asserted against the three different groups of defendants. The parties

request for consolidated briefing would conserve judicial resources by eliminating redundant briefing across three separate sets of briefs—and ultimately reduce the total number of pages before the Court. As indicated by the signature below counsel for Plaintiffs agrees with the relief requested herein.

II.

POTTER COUNTY DEFENDANTS SEEK AN EXTENSION OF TIME TO FILE A CONSOLIDATED MOTION TO DISMISS

The Plaintiffs filed their Amended Complaint, Doc. 36, on December 17, 2020. Pursuant to Federal Rule of Civil Procedure 15(a)(3) the current deadline for Potter County Defendants to file a response falls on Thursday, December 31, 2020. The Plaintiffs' Amended Complaint expanded to 204 paragraphs from the Original Complaint's 126 paragraphs.

The Potter County Defendants seek an eight day extension of time to file a consolidated Motion to Dismiss in order to account for the intervening Christmas and New Year's holidays. This additional time will give the Potter County Defendants the opportunity to thoroughly and properly respond to the new allegations contained in the Plaintiffs' First Amended Complaint. This extension of time, until Friday, January 8, 2021, would promote a just, speedy, and inexpensive determination of this case because the additional time would provide the Potter County Defendants adequate time to address these new allegations in the format of a consolidated Motion to Dismiss so that the Court can consider the complex issues in this case involving multiple classes of defendants, claims, and pleading standards.

This extension of eight days accounts for the Christmas and New Year's holidays, both of which are recognized legal holidays under Federal Rule of Civil Procedure 6(a). The law offices of counsel for the Potter County Defendants will be closed on December 24, 25, and January 1, 2021. An eight-day extension in filing a Motion to Dismiss which moves the date of filing from

December 31, 2020 until January 8, 2021 will not adversely impact opposing counsel or this Court due to the presence of the New Year's holiday which would otherwise fall within the time for opposing counsel to file a response.

Federal Rule of Civil Procedure 6(b)(1)(A) provides district courts the discretion to grant extensions of time for good cause. FED. R. CIV. P. 6(b)(1)(A); *Doss v. Helpenstell*, 699 F. App'x 337, 339 (5th Cir. 2017) (“A district court's decision to grant a request for an extension of time is reviewed only for an abuse of discretion.”). “An application for extension of time under Rule 6(b)(1)(A) normally will be granted in the absence of bad faith on the part of the party seeking relief or prejudice to the adverse party.” 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1165 (4th ed. 2020).

In considering good cause this Court has considered the requests of Defendants for an extension of a deadline prior to the deadline if (1) the extension would promote a just, speedy, and inexpensive determination of the case; and (2) justification for the issuance of the extension was provided. *Alexander R. Deanda v. Alex Azar II, et al.*, No. 2:20-CV-92-Z, Doc. 8 slip op. at 2 (N.D. Tex. filed June 11, 2020). In *Heb Grocery Co., LP v. Tex. Spice Co., Inc.*, a motion for extension of time to file an answer was made before the expiration of the period originally prescribed was granted because the court noted that it believed it should rule on the substantive merits of a case whenever possible. *Heb Grocery Co., LP v. Tex. Spice Co., Inc.*, SA-05-CA-1044-RF, 2006 WL 509246, at *1 (W.D. Tex. Feb. 16, 2006).

Here, the justification for the extension of time that the Potter County Defendants seek is that the deadline falls over intervening federal holidays, a time period during which the offices of counsel will be closed. Additionally, the Plaintiffs' Amended Complaint added numerous new allegations. To properly brief these new allegations for the consideration of the Court will require

additional time. The granting of this extension of time will promote a just, speedy, and inexpensive determination of this case because the eight day extension requested will result in an anticipated date of February 12, 2021 for the conclusion of briefing on the motion to dismiss. This short delay which will enable better quality briefing from both parties which will assist the Court in the resolution of the issues in this case.

As indicated by the signature below counsel for the Plaintiff is unopposed to the request of Potter County Defendants for an extension of time until January 8, 2021 to file a consolidated Motion to Dismiss.

III.
CONCLUSION

The parties respectfully request the Court grant Potter County Defendants and Plaintiffs leave to file a consolidated Motion to Dismiss and consolidated response not to exceed 50 pages, and Potter County Defendants leave to file a consolidated reply not to exceed 25 pages, excluding the table of contents and table of authorities. The Potter County Defendants respectfully request that the deadline for the filing of the consolidated Motion to Dismiss in response to Plaintiffs' Amended Complaint be extended from December 31, 2020 until January 8, 2021.

Respectfully submitted,

/s/ Morgan Day Vaughan

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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing was on this 23rd day of December, 2020, served as follows:

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